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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,098	06/25/2003	Kouichi Miyamoto	AA-594	2541

27752 7590 04/14/2006

THE PROCTER & GAMBLE COMPANY  
INTELLECTUAL PROPERTY DIVISION  
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CINCINNATI, OH 45224

EXAMINER

HILL, LAURA C

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 04/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO. <span style="float: right;">6</span>
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EXAMINER
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ART UNIT	PAPER
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20060404

DATE MAILED:

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner for Patents**

<b>Office Action Summary</b>	<b>Application No.</b> 10/606,098	<b>Applicant(s)</b> MIYAMOTO, KOUICHI	
	<b>Examiner</b> Laura C. Hill	<b>Art Unit</b> 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10 February 2006 has been entered.

### ***Response to Arguments***

It is noted that Applicant did not submit any arguments on 23 January 2006 but only a Notice of Appeal. It is also noted that Applicant also did not submit any arguments on 10 January 2006 but stated the claims were allowable in view of the amendments.

### ***Specification***

2. The abstract filed 22 September 2005 is accepted as being proper format and length of 138 words.
3. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: Disposable Absorbent Article Having Elasticized T-Shaped Outer Leg Cuff and Barrier Leg Cuff.

***Double Patenting***

4. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 1 and 9-10 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 1, 10, and 2 respectively of copending Application No. 10/325,153. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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5. Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Yoshioka (US 6,156,023; herein 'Yoshioka'). Regarding claim 1 Yoshioka discloses disposable diaper 1 with absorbent core 4 disposed between liquid pervious top sheet 2 and liquid impervious back sheet 3 (column 2, lines 40-42), a barrier cuff disposed adjacent the longitudinal side edge (barrier cuff is considered longitudinal strip on the right side of element 19 in figure 2), an elasticized outer cuff 19 disposed adjacent to a longitudinal side edge of the article (column 2, lines 50-52 and figures 1-2), the outer cuff 19 having second overhang section/base 18 and a gasket cuff supported by the base 18 at a first overhang section/joint 17 (column 3, lines 13-22), the gasket provided with elastic members 24 (column 3, lines 9-12) and having a sealing surface zone/top gasket cuff surface 20 (column 3, lines 13-15), inner cuff 31 extending laterally inward from joint 17 (figure 3), wherein before use the outer leg cuff 19 is folded laterally inward onto the inner surface of the absorbent article such that the top gasket cuff surface 20 faces upwardly and said barrier cuff is located between outer cuff 19 and inner surface of the absorbent article (figures 2-3).

Regarding claim 2 Yoshioka discloses the disposable absorbent article inherently is folded along a lateral direction in order to form a wearable diaper 1 with waist and leg openings. The discovery of a previously unappreciated property of a prior art composition, or of a scientific explanation for the prior art's functioning, does not expressly disclose not render the old composition patentably new to the discoverer. *Atlas Powder Co. v. Ireco Inc.*, 190F.3d 1342, 1347, 51 USPQ2d 1943, 1947 (Fed. Cir. 1999). Thus the claiming of a new use, new function or unknown property which is

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inherently present in the prior art does not expressly disclose not necessarily make the claim patentable. *In re Best*, 562 F.2d 1252, 1254, 195 USPQ 430, 433 (CCPA 1977).

Regarding claims 3-4 and 7 Yoshioka discloses side flap 11 extending laterally outward from absorbent core 4 (column 2, lines 46-50, figure 3), the base 18 comprises the proximal flap, the gasket cuff comprises the distal flap and the outer leg cuff 19 is folded laterally inwardly along a first folding line positioned adjacent the longitudinal side edge (figure 3).

Regarding claims 5-6 Yoshioka discloses outer leg cuff 19 is folded back laterally outward along a second folding line adjacent element 31, said second folding line is positioned between the first folding line and the joint adjacent the joint (figure 3).

Regarding claims 8-9 Yoshioka discloses back sheet 3 extends outward beyond transversely opposite side edges of the top sheet and the proximal section 10 forming elasticized outer leg cuff 19 (column 3, lines 48-53).

Regarding claim 10 Yoshioka discloses T-shaped outer leg cuff 19 (figure 3).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Minato et al. (US 6,659,993) is cited for showing a diaper 1 comprising side flaps 13 that have barrier cuffs 14 with elastic members 2, said barrier cuffs further comprise opposite front and rear ends 27,28 and is disposed between leg cuff 13 and inner surface of absorbent article. Shimada et al. (US 6,767,343) is cited for showing a pull-on diaper 1 with barrier cuffs 11 having fixed side edge portions 11a biased to rise on top sheet, opposite fixed end portions 11c, and free side edge portions

11b folded inwardly. Vandemoortele (US 5,672,166) is cited for showing a diaper with side flaps 11 having intermediate part 11a comprising a lengthwise fold 16 in which elastic member 14 is contained, these folds 16 are pointed vertically towards the interior and situated above the absorbent pad nearer the lengthwise pad edges, and lengthwise edges 12 on side flaps 11 are folded back and adhesively bonded to form gussets in which elastic members 13 are secured in a stretched state.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137. The examiner can normally be reached on Monday through Friday (off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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Laura C. Hill  
Examiner  
Art Unit 3761  
LCH

LCH

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

A handwritten signature in black ink, appearing to read 'Tatyana', with a long, sweeping horizontal stroke extending to the right.